

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.308, 17.8.504, 17.8.744, and)	PROPOSED AMENDMENT
17.8.1205 pertaining to particulate)	
matter, permit application fees, general)	(AIR QUALITY)
exclusions for air quality permits, and)	
requirements for timely and complete air)	
quality operating permit applications)	

TO: All Concerned Persons

1. On November 25, 2008, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 10, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.308 PARTICULATE MATTER, AIRBORNE (1) through (4)(c) remain the same.

(5) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from ~~any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exemption does not apply to the processing of agricultural products by a commercial business);~~

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(a), MCA; or

(b) a business relating to the activities or equipment referred to in (5)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(b), MCA.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

REASON: In 2007, the Montana Legislature amended 75-2-111, MCA, to

limit the board's power to regulate certain agricultural activities for air quality purposes. The references to agricultural exemptions in the current rules are not sufficiently broad to encompass the activities the Legislature defined as exempt in 75-2-111(1)(a) and (b), MCA.

The current rules do not exempt commercial agricultural operations. However, the statute exempts commercial agricultural operations unless they remain in a single location for 12 months and/or are subject to federal permitting requirements. The board is proposing to revise the rules to conform to the statutory exemption. Because the requirements related to fugitive particulate emissions and Montana air quality permits are found only in the rules, it is necessary to add the statutory language in order to avoid inconsistency with the statutory amendments.

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) ~~Concurrent with submittal of~~ An applicant submitting a Montana air quality permit application, as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, ~~the applicant~~ shall submit an application fee as provided in (1)(a) and (b):

(a) and (b) remain the same.

(2) ~~Concurrent with submittal~~ An applicant submitting one or more of the following air quality operating permit applications, as required in ARM Title 17, chapter 8, subchapter 12, ~~the applicant~~ shall submit an application fee of \$500 for each application as follows:

(a) an application for a new air quality operating permit ~~that is not submitted concurrently with a Montana air quality permit application;~~

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Under the current rules, a permit applicant is not charged an additional fee for an application for a Title V air quality major source operating permit if the application is submitted concurrently with an application for a Montana air quality permit (MAQP). However, the applications are reviewed separately and under different criteria, and review of each application requires a substantial amount of department staff time. Currently, the department is required to pay staff for review of Title V permit applications with funds from other sources, when the application is submitted concurrently with an application for an MAQP. However, the board believes that it would be more appropriate for the permit applicant to pay the department's costs in reviewing the application, regardless of whether it is submitted concurrently with an application for an MAQP or not. Therefore, the board is proposing to amend the rule to require a permit applicant to submit a separate fee for each permit application, regardless of when it is submitted.

Pursuant to 2-4-302(1)(c), MCA, the proposed amendment is estimated to affect seven persons for a cumulative increase of approximately \$3,500 in fees collected per year.

17.8.744 MONTANA AIR QUALITY PERMITS--GENERAL EXCLUSIONS

(1) A Montana air quality permit is not required under ARM 17.8.743 for the

following:

(a) through (c) remain the same.

~~(d) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses)~~
any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(a), MCA;

(e) a business relating to the activities or equipment referred to in (1)(d) that remains in a single location for less than 12 months and is not subject to the requirements of 42 USC 7475, 7503, or 7661, as set forth in 75-2-111(1)(b), MCA;

(e) through (l) remain the same, but are renumbered (f) through (m).

AUTH: 75-2-111, 75-2-204, 75-2-234, MCA

IMP: 75-2-211, 75-2-234, MCA

REASON: See reason for ARM 17.8.308.

17.8.1205 REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) remains the same.

(2) To be considered timely for the purposes of this rule, a ~~source that is person~~ required to obtain a permit pursuant to this subchapter ~~must~~ shall file its an application with the department as follows:

~~(a) One-third of all sources in existence on the date this rule is adopted by the board, or sources that have obtained Montana air quality permits prior to the adoption date of this rule but commence operation after such adoption date, shall submit an air quality operating permit application no later than one year after the adoption date or within 30 days of the date the permit program is approved by the administrator (including partial or interim approval), whichever is later. The remainder of these sources shall submit a permit application no later than one year after the date the permit program is approved by the administrator (including partial or interim approval). Within 30 days after the adoption date of this rule, the department shall notify the 1/3 of the above-described sources that are required to submit applications for permits under this subchapter by the first deadline set forth above. The method used by the department to determine which of the above-described sources are included in the initial 1/3 must be fair and equitable and shall to the greatest extent practicable provide for a representative sample of air quality operating permit sources in terms of source size and type.~~

~~(b)~~ (a) An source applicant applying for an air quality operating permit for the first time due to the applicability of newly promulgated regulations shall submit a permit application within 12 months after the source becomes subject to the permit program.

~~(c)~~ (b) Sources Persons required to obtain an air quality operating permit or permit revision that who are also required to obtain a Montana air quality preconstruction permit under this chapter shall ~~submit an~~ file a complete application for an air quality operating permit or permit revision ~~concurrent with the submittal of~~

the Montana air quality permit application within 12 months after commencing operation, unless an existing operating permit would prohibit the construction or change in operation. If an existing operating permit would prohibit the construction or change in operation, the owner or operator shall obtain a permit revision before commencing operation.

~~(i) The processing of the Montana air quality and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each application for an air quality operating permit, permit renewal, or permit revision and the associated Montana air quality permit application will be processed independently of any other pending application under this chapter, including sources with pending air quality operation permit applications who submit an application for a new or altered Montana air quality permit during the initial transition period. Submittal of new air quality permit applications shall not impede the issuance of any pending air quality permit application.~~

~~(ii) During the initial transition period, sources that receive final Montana air quality permits prior to their submittal of an operating permit application shall be required to address any changes to their facility in the operating permit application. The operating permit application shall be submitted per the schedule prescribed in (2)(a).~~

~~(d) (c)~~ For renewal, a source permittee shall submit a complete air quality operating permit application to the department not later than six months prior to the expiration of its the existing permit, unless otherwise specified in that permit. If necessary to ensure that the ~~terms of the~~ existing permit will not ~~lapse~~ expire before the renewal permit is issued, the department may ~~specify~~ notify the permittee in writing to the ~~permitted source a longer time period for submission of that the~~ renewal application must be submitted by a specified deadline that is earlier than six months prior to permit expiration. Such written notification must be provided at least one year before the renewal application due date established in the existing permit. In no case shall may this extended time period or the time period established in the existing permit be greater than 18 months.

~~(e) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.~~

(3) To be deemed complete for the purposes of this rule, a source must file its an application for an air quality operating permit, or permit revision must be filed with the department as follows:

(a) An air quality operating permit application must applicant shall provide all information required pursuant to this rule and ARM 17.8.1206. An ~~application~~ applicant for permit revision ~~need supply such~~ shall submit all required information only if it is related to the proposed change, and ~~an~~ An application for renewal ~~need only~~ must address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. The applicant shall submit ~~information submitted pursuant to this rule and ARM 17.8.1206 must be sufficient for the department to evaluate the subject source and its the application and pursuant to determine all applicable requirements. If the applicant provides sufficient information to satisfy the requirements of the application completeness~~

checklist, then the application shall be deemed to be administratively complete for the purposes of applying the application shield provided for in ARM 17.8.1221; and the department shall notify the applicant of such administrative completeness. ~~Use of the completeness checklist is not intended to replace a substantive completeness review and determination pursuant to this subchapter, but is only intended to facilitate the application of the application shield.~~ A responsible official shall certify the submitted information consistent with ARM 17.8.1207. Except as otherwise provided in ARM 17.8.1220(6) and (7), or unless the department determines that an air quality operating application is not substantively complete within 60 days of receipt of the application, such application shall be deemed to be substantively complete.

~~(b) If, while processing an application for an air quality operating permit or permit revision that has been determined or deemed to be substantively complete~~ During the permit review process set forth in (3)(a), the department may determine that additional information is necessary to evaluate or take final action on ~~that the~~ the application, ~~it and~~ and may request such information in writing and set a reasonable deadline for a response, ~~{ which may not be less than 15 days}.~~

~~(c) The source's ability to operate without an air quality operating permit, as set forth in ARM 17.8.1221(2), shall be in effect from the date the application is determined or deemed to be administratively complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.~~

~~(d) (c)~~ Sources that would qualify Applicants eligible for a general air quality operating permit ~~must shall~~ provide written notification to the department of their intent to operate under the terms of the general permit, or ~~must shall~~ apply for an air quality operating permit consistent with (1). The terms of the general permit adopted pursuant to ARM 17.8.1222 may provide for applications ~~which that~~ that deviate from the requirements of (1), and ARM 17.8.1206, ~~provided that if such requirements~~ applications are consistent with Title subchapter V of the FCAA, and include all information necessary for the department to determine qualification for, and assure compliance with, the general permit.

~~(e) (d)~~ An application applicant for an air quality operating permit revision that ~~is submitted as a~~ submits an application for a minor permit modification shall meet the requirements of ARM 17.8.1206, and shall include the following with the application:

- (i) remains the same.
- (ii) the ~~source's~~ applicant's suggested draft permit;
- (iii) and (iv) remain the same.

~~(f) (e)~~ An application for an air quality operating permit revision that is submitted as part of a group processing of minor modifications ~~shall must~~ meet the requirements of ARM 17.8.1206, and ~~shall must~~ include the following:

- (i) remains the same.
- (ii) the ~~source's~~ applicant's suggested draft permit;
- (iii) remains the same.

(iv) a list of the ~~source's~~ applicant's other pending permit modification applications ~~awaiting group processing~~, and a determination of as to whether the requested modification, when aggregated with these other applications, equals or

exceeds the threshold set under ARM 17.8.1226(7)(b);

(v) certification by a responsible official, consistent with ARM 17.8.1207, that the ~~source has~~ applicant notified the administrator of the proposed modification. Such notification need only contain a brief description of the requested modification; and

(vi) remains the same.

(4) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for an air quality operating permit or permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such ~~supplementary~~ facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it the applicant filed a substantively complete application, but prior to release of a draft permit.

(5) ~~Where~~ If an applicant ~~has submitted~~ submits information to the department under a judicial determination of confidentiality, the ~~source must~~ applicant shall submit a copy of such information directly to the administrator. This requirement does not preclude or limit ~~in any manner~~ the right of the applicant to assert to the administrator the confidential status and nature of the information.

AUTH: 75-2-217, 75-2-218, MCA

IMP: 75-2-217, 75-2-218, MCA

REASON: The board is proposing to amend ARM 17.8.1205(2) to ensure an MAQP and a Title V permit may be processed in an order that preserves the integrity of the timelines and, therefore, the validity of the final decision for each.

The underlying federal Title V permit regulations upon which the state rules and associated enforcement authority are predicated provide that "[a] timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." 40 CFR 70.5(a)(1)(i). The current state rule requires an applicant to submit an application for a Title V permit concurrently with an application for a MAQP. Upon receipt of a complete application for a Title V permit, the department is required, pursuant to ARM 17.8.1220(2), to take final action regarding the application within 18 months. Title V permits must include all requirements applicable to the facility, so, when a MAQP also is required, it is impractical to issue a Title V permit prior to issuing a final MAQP. However, the MAQP process may be interrupted or delayed for a variety of reasons outside the department's control. Therefore, the board is proposing to amend ARM 17.8.1205(2) to require the owner or operator to file an application for a Title V permit within 12 months after commencing operation, or, if an existing permit would prohibit the proposed construction or change, before commencing operation.

ARM 17.8.1205(2) also contains provisions regarding the processing of initial applications, which occurred several years ago. These provisions are no longer necessary and are proposed for deletion.

The board is proposing to delete from ARM 17.8.1205(3)(a) the references to an application completeness checklist. The checklist, which may be used by

department staff to assist them in determining whether an application is complete, is not required by rule. Therefore, although the checklist may be a useful aid to permit application reviewers, the board believes that it is not appropriate to refer to the checklist in the rule and that the formal determination of application completeness should be based on the requirements stated in the rules.

The rule contains a provision at (3)(c) which is redundant of ARM 17.8.1221 and is, therefore, unnecessary and proposed for deletion.

The amendments also would correct a number of grammatical and syntax errors.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., November 25, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; openpit mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply to the

proposed amendments related to the agricultural exemption, and the department has complied with those requirements. The bill sponsor was notified by U.S. mail on August 21, 2008.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, October 14, 2008.